

THE STATE OF TEXAS

BID # S10-E22952

COUNTY OF HARRIS

ORDINANCE# 2008-1038

CONTRACT # 4600009125

**AGREEMENT FOR COMPUTER SOFTWARE
AND HARDWARE MAINTENANCE SERVICES**

I. PARTIES

1.0 ADDRESS:

THIS AGREEMENT FOR COMPUTER SOFTWARE AND HARDWARE MAINTENANCE SERVICES ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation and **GENERAL DYNAMICS ITRONIX CORPORATION**. ("Prime Contractor or Vendor"), a corporation doing business in Texas.

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

City

City Purchasing Agent for Director
Public Works & Engineering Department
City of Houston
P.O. Box 1562
Houston, Texas 77251

Contractor

General Dynamics Itronix
Corporation
12825 East Mirabeau Parkway
Spokane Valley, WA 99216

The Parties agree as follows:

2.0 TABLE OF CONTENTS:

2.1 This Agreement consists of the following sections:

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3.0 PARTS INCORPORATED:

3.1 The above described sections, exhibits, and appendices are incorporated into this Contract.

4.0 CONTROLLING PARTS:

4.1 If a conflict among the sections or exhibits arises the Exhibits control over the Sections.

5.0 DEFINITIONS:

5.1 Certain terms used in this Agreement are defined in Exhibit "A."

6.0 SIGNATURES:

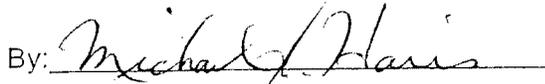
6.1 The Parties have executed this Agreement in multiple copies, each of which is an original.

ATTEST/SEAL (if a corporation):

GENERAL DYNAMICS ITRONIX CORPORATION:

WITNESS (if not a corporation):

By: 

By: 

Name: Michael DiBiase

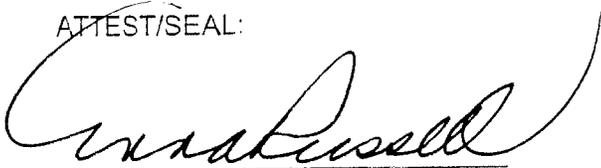
Name: Michael J. Harris

Title: Vice President & Gen Mgr

Title: Director, Contracts

Federal Tax ID Number: 20-1693891

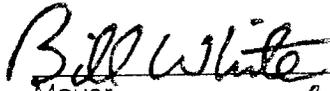
ATTEST/SEAL:



City Secretary

CITY OF HOUSTON, TEXAS

Signed by:

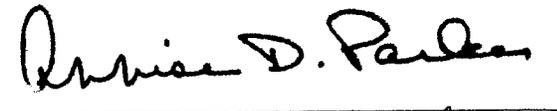
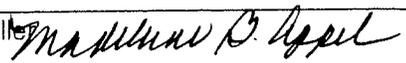

Mayor 

APPROVED:



City Purchasing Agent

COUNTERSIGNED BY:


City Controller 

DATE COUNTERSIGNED:

12-1-08

APPROVED AS TO FORM:


Sr. Assistant City Attorney

II. DUTIES OF CONTRACTOR

1.0 SCOPE OF SERVICES:

- 1.1 In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform the services described in Exhibit "B" & "BB."

2.0 INDEMNITY AND RELEASE:

2.1 RELEASE

PRIME CONTRACTOR/SUPPLIER AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE CITY) FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT TO THE EXTENT CAUSED BY CONTRACTOR/SUPPLIER'S NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS.

2.2 INDEMNIFICATION:

PRIME CONTRACTOR/SUPPLIER AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY "THE CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- 2.2.1 PRIME CONTRACTOR/SUPPLIERS AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 2.1-2.3, "PRIME CONTRACTOR/SUPPLIER") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- 2.2.2 PRIME CONTRACTOR/SUPPLIER'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER PRIME CONTRACTOR/SUPPLIER IS IMMUNE FROM LIABILITY OR NOT.
- 2.2.3 PRIME CONTRACTOR/SUPPLIER SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. PRIME CONTRACTOR/SUPPLIER'S

INDEMNIFICATION IS LIMITED TO \$500,000.00 PER OCCURRENCE. PRIME CONTRACTOR/SUPPLIER SHALL NOT INDEMNIFY THE TO THE EXTENT OF THE CITY'S NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS.

2.3 INDEMNIFICATION:

PRIME CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

3.0 INDEMNIFICATION PROCEDURES:

3.1 Notice of Claims. If the City or Prime Contractor/Supplier receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within ten (10) days. The notice must include the following:

3.1.1 a description of the indemnification event in reasonable detail,

3.1.2 the basis on which indemnification may be due, and

3.1.3 the anticipated amount of the indemnified loss.

3.2 This notice does not stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the ten (10) day period, it does not waive any right to indemnification except to the extent that Prime Contractor/Supplier is prejudiced, suffers loss, or incurs expense because of the delay.

3.3 Defense of Claims

3.3.1 Assumption of Defense. Prime Contractor/Supplier may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Prime Contractor/Supplier shall then control the defense and any negotiations to settle the claim. Within ten (10) days after receiving written notice of the indemnification request, Prime Contractor/Supplier must advise the City as to whether or not it will defend the claim. If Prime Contractor/Supplier does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

3.3.2 Continued Participation. If Prime Contractor/Supplier elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Prime Contractor/Supplier may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would

require the City to pay amounts that Prime Contractor/Supplier does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement. The City shall reasonably cooperate with Contractor/Supplier in its defense of any claim that Contractor/Supplier has elected to defend.

4.0 INSURANCE:

4.1 Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Subject to Contractor's self-insured retention, Contractor shall maintain the following insurance coverage in the following amounts:

4.1.1 Commercial General Liability insurance including Contractual Liability insurance:

\$500,000 per occurrence; \$1,000,000 aggregate

4.1.2 Workers' Compensation including Broad Form All States endorsement:
Statutory amount

4.1.3 Automobile Liability insurance

\$1,000,000 combined single limit per occurrence
Defense costs are excluded from the face amount of the policy.

Aggregate Limits are per 12-month policy period unless otherwise indicated.

4.1.4 Employer's Liability

Bodily injury by accident \$100,000 (each accident)
Bodily injury by disease \$100,000 (policy limit)
Bodily injury by disease \$100,000 (each employee)

4.2 All insurance policies must require on their face that Contractor shall give 30 days written notice to the City when it becomes aware that a policy may be canceled. The Contractor shall provide other suitable policies in lieu of those canceled, materially changed, or non-renewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or sole discretion, may:

immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or

5.0 WARRANTIES:

- 5.1 Contractor represents and warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having adequate experience performing the work required under this Agreement.
- 5.2 With respect to any parts and goods furnished by it, Contractor warrants:
 - 5.2.1 that all items are free of defects in title, material, and workmanship,
 - 5.2.2 that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed, and
 - 5.2.3 that each replacement item is new in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and
 - 5.2.4 that no item or its use infringes any patent, copyright, or proprietary right.

6.0 LICENSES AND PERMITS:

- 6.1 Contractor shall obtain and pay for all licenses, permits, and certificates required of Contractor by any statute, ordinance, rule, or regulation.

7.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE:

- 7.1 Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit "C."

8.0 MWBE COMPLIANCE:

- 8.1 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply Agreements in at least 0% of the value of this Contract to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Affirmative Action Division and will comply with them.
- 8.2 Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration in Houston, Texas if directed to do so by the Affirmative Action Division Director. MWBE subcontracts must contain the terms set out in Exhibit "D." If Contractor is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, the subcontract must also be signed by the attorneys of the respective parties.

9.0 DRUG ABUSE DETECTION AND DETERRENCE:

- 9.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.
- 9.2 Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):
 - 9.2.1 A copy of its drug-free workplace policy,
 - 9.2.2 The Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "E," together with a written designation of all safety impact positions and,
 - 9.2.3 If applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F."
- 9.3 If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every (6) months during the performance of this Agreement or on completion of this Agreement if performance is less than (6) months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "G." Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.
- 9.4 Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.
- 9.5 Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

10.0 ENVIRONMENTAL LAWS:

- 10.1 Contractor shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency ("EPA"), the Texas Commission on Environmental Quality ("TCEQ"), and any other governmental agency with the authority to promulgate environmental rules and regulations ("Environmental Laws"). Contractor shall promptly reimburse the City for any fines or penalties levied against the City because of Contractor's failure to comply.

- 10.2 Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the site except in strict compliance with the Environmental Regulations. "Hazardous Materials" means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Contractor shall not deposit oil, gasoline, grease, lubricants or any ignitable or hazardous liquids, materials, or substances in the City's storm sewer system or sanitary sewer system or elsewhere on City Property in violation of the Environmental Laws.

11.0 CONTRACTOR'S PERFORMANCE:

- 11.1 Contractor shall make citizen satisfaction a priority in providing services under this Agreement. Contractor shall train its employees to be customer service-oriented and to positively and politely interact with citizens when performing contract services. Contractor's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of service to the public. If, in the Director's opinion, Contractor is not interacting in a positive and polite manner with citizens, he or she shall direct Contractor to take all remedial steps to conform to these standards.

12.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS:

- 12.1 Contractor shall make timely payments in accordance with applicable state and federal law to all persons and entities supplying labor, materials or equipment for the performance of this Agreement including Contractor's employees.
- 12.2 Failure of Contractor to pay it's employees as required by law shall constitute a default under this contract for which the Contractor and its surety shall be liable, if Contractor fails to cure the default as provided under this Agreement.
- 12.3 Contractor shall defend and indemnify the City from any claims or liability arising out of Contractors failure to pay its subcontractors as required by law. Contractor shall submit disputes relating to payment of M/WBE subcontractors to arbitration in the same manner as any other disputes under the M/WBE subcontract.

13.0 CONTRACTOR PAY OR PLAY PROGRAM:

- 13.1 The requirement and terms of the City of Houston Pay or Play Policy, as set out in Executive Order 1-7, are incorporated into this Contract for all purposes. Contractor has reviewed Executive Order 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Contract (Exhibit "I").

III. DUTIES OF CITY

1.0 PAYMENT TERMS:

- 1.1 The City shall pay and Contractor shall accept fees at the prices provided in Exhibits H-1, H-2, B and BB for all services rendered and the Deliverables

furnished by Contractor. The fees must only be paid from Allocated Funds, as provided below in Section 5.0.

- 1.2 Any quantities of services or Deliverables shown in any part of this contract or its exhibits are estimated only and are not any guarantee that the City will not purchase more or less of those services or Deliverables. The City will pay only for the services or Deliverables actually ordered and only at the unit prices set out.

2.0 TAXES:

- 2.1 The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

3.0 METHOD OF PAYMENT:

- 3.1 The City shall pay Contractor on the basis of invoices submitted by Contractor and approved by the Director, showing the specific tasks completed in the preceding month and the corresponding prices. The City shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice.

4.0 METHOD OF PAYMENT - DISPUTED PAYMENTS:

- 4.1 If the City disputes in good faith any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

5.0 LIMIT OF APPROPRIATION:

- 5.1 The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.
- 5.2 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$108,044 to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:
- 5.3 The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be

approved by motion or ordinance of City Council.

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

TO: [Name of Contractor]
FROM: City of Houston, Texas (the "City")
DATE: [Date of notice]
SUBJECT: Supplemental allocation of funds for the purpose of the "[title of this Agreement]" between the City and (name of Contractor) countersigned by the City Controller on (Date of Countersignature) (the "Agreement").

I, (name of City Controller), City Controller of the City of Houston, certify that the supplemental sum of \$108,044.00, upon the request of the below-signed Director, has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

The aggregate of all sums allocated for the purpose of such Agreement, including the Original Allocation, and all supplemental allocations (including this one), as of the date of this notice, is _____.

SIGNED:
(Signature of the City Controller)
City Controller of the City

REQUESTED:
(Signature of the Director)
Director

- 5.4 The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement and it has no other remedy in law or in equity against the City and no right to damages of any kind.

6.0 CHANGES:

- 6.1 At any time during the Agreement Term, the City Purchasing Agent or Director may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.

- 6.2 The City Purchasing Agent or Director will issue the Change Order in substantially the following form:

CHANGE ORDER

TO: [Name of Contractor]
FROM: City of Houston, Texas (the "City")
DATE: [Date of Notice]
SUBJECT: Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement].

Subject to all terms and conditions of the Agreement, the City requests that Contractor provide the following:

[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]

Signed:
[Signature of City Purchasing Agent or Director]

- 6.3 The City Purchasing Agent or Director may issue more than one Change Order, subject to the following limitations:
- 6.3.1 Council expressly authorizes the City Purchasing Agent or Director to approve a Change Order of up to \$50,000. A Change Order of more than \$50,000 over the approved contract amount must be approved by the City Council.
 - 6.3.2 If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.
 - 6.3.3 The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.
- 6.4 Whenever Contractor receives a Change Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. The City Purchasing Agent's or Director's decision regarding a time extension is final.
- 6.5 A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.

6.6 Change Orders are subject to the Allocated Funds provisions of this Agreement.

IV. TERM AND TERMINATION

1.0 CONTRACT TERM:

1.1 This Agreement is effective on the Countersignature Date and expires three (3) years after the date specified in the Notice to Proceed unless sooner terminated according to the terms of this Agreement.

2.0 NOTICE TO PROCEED:

2.1 Contractor shall begin performance under this Agreement on the date specified in a Notice to Proceed from the City Purchasing Agent.

3.0 RENEWALS:

3.1 Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for two successive one-year terms on the same terms and conditions, as mutually agreed to by both, Contractor and the City of Houston. If the Director of the City Department elects not to renew this Agreement, the City Purchasing shall notify Contractor in writing of non-renewal at least 30 days before the expiration of the then-current term.

4.0 TIME EXTENSIONS:

4.1 If Department requests an extension of time to complete its performance, then the City Purchasing Agent may, in his or her sole discretion, extend the time so long as the extension does not exceed 90 days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

5.0 TERMINATION FOR CONVENIENCE BY THE CITY:

5.1 The City Purchasing Agent or Director may terminate this Agreement at any time by giving 30 days prior written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

5.2 On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section III unless the fees exceed the allocated funds remaining under this Agreement.

- 5.3 TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

6.0 TERMINATION FOR CAUSE BY CITY:

- 6.1 If Contractor defaults under this Agreement, and that default is not cured within 30 days or, if the cure, by its nature, cannot be completed within 30 days, the cure is not commenced to the City's reasonable satisfaction within 30 days, the City Purchasing Agent or Director may either terminate this Agreement or allow Contractor further time to cure the default as provided below. Default by Contractor occurs if Contractor fails to perform one or more of its material duties under this Agreement. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies which exist now or in the future. Default by Contractor occurs if:
- 6.1.1 Contractor fails to perform any of its duties under this Agreement;
 - 6.1.2 Contractor becomes insolvent;
 - 6.1.3 All or a substantial part of Contractor's assets are assigned for the benefit of its creditors;
- (or)
- 6.1.4 A receiver or trustee is appointed for Contractor.
- 6.2 If a default occurs, the City Purchasing Agent or Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The City Purchasing Agent or Director at his or her sole option, may extend the termination date to a later date. If the City Purchasing Agent or Director allows Contractor additional time to cure the default and Contractor does so to the City Purchasing Agent's or Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default or commence the cure to the reasonable satisfaction of the City before the termination date, then the City Purchasing Agent or Director may terminate this Agreement on the termination date, at no further obligation of the City.
- 6.3 To effect final termination, the City Purchasing Agent or Director must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

7.0 TERMINATION FOR CAUSE BY CONTRACTOR:

- 7.1 Contractor may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor wishes to terminate the Agreement, then Contractor must deliver a written notice to the Director describing the default and the proposed termination date.
- 7.2 The date must be at least 30 days after the defaulting party's receipt of the notice. Contractor, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Contractor may terminate its performance under this Agreement on the termination date.

8.0 REMOVAL OF CONTRACTOR-OWNED EQUIPMENT AND MATERIALS:

- 8.1 Upon expiration, or termination of this Agreement, Contractor is permitted ten (10) business days within which to remove contractor-owned material and equipment from the City's premises. The City shall make such material and equipment readily available to Contractor. The time period may be extended upon approval by the Director. The City reserves the right to deny any extension of time.

V. MISCELLANEOUS

1.0 INDEPENDENT CONTRACTOR:

- 1.1 Contractor shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City.

2.0 FORCE MAJEURE:

- 2.1 Timely performance by both parties is essential to this Agreement. However, neither party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, shortage of supplies and material through no fault of Contractor, labor actions of suppliers, and the acts of superior governmental or military authority.
- 2.2 This relief is not applicable unless the affected party does the following:
 - 2.2.1 Uses due diligence to remove the Force Majeure as quickly as possible; and
 - 2.2.2 Provides the other party with prompt written notice of the cause and its anticipated effect.

- 2.3 The City may perform contract functions itself or contract them out during periods of Force Majeure that exceed 30 days. Such performance does not constitute a default or breach of this Agreement by the City.
- 2.4 If the Force Majeure continues for more than 30 days, the City Purchasing Agent or Director may terminate this Agreement by giving 30 days' written notice to Contractor. This termination is not a default or breach of this Agreement. CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.

3.0 SEVERABILITY:

- 3.1 If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

4.0 ENTIRE AGREEMENT:

- 4.1 This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind exist between the Parties regarding this Agreement.

5.0 WRITTEN AMENDMENT:

- 5.1 Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance duly adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

6.0 APPLICABLE LAWS:

- 6.1 This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.
- 6.2 Venue for any litigation relating to this Agreement is Harris County, Texas.

7.0 NOTICES:

- 7.1 All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section I of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

8.0 NON-WAIVER:

- 8.1 If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.
- 8.2 An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Contract or establish a standard of performance other than that required by this Contract and by law. The Director is not authorized to vary the terms of this Contract.

9.0 INSPECTIONS AND AUDITS:

- 9.1 City representatives may perform, or have performed: 1) audits of Contractor's relevant books and records; and 2) inspections of all places where work is undertaken in connection with this Agreement, provided that inspections at Contractor's facilities shall be undertaken in compliance with Contractor's security requirements. Contractor shall keep its books and records available for this purpose for at least three (3) years after this Contract terminates. This provision does not affect the applicable statute of limitations.

10.0 ENFORCEMENT:

- 10.1 The City Attorney or his or her designee may enforce all legal rights and obligations under this Contract without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney reasonably requests to assist in determining Contractor's compliance with this Contract, with the exception of those documents made confidential by federal or State law or regulation.

11.0 AMBIGUITIES:

- 11.1 If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

12.0 SURVIVAL:

- 12.1 Contractor shall remain obligated to the City under all clauses of this Contract that expressly or by their nature extend beyond the expiration or termination of this Contract, including but not limited to, the indemnity and limitation of liability provisions.

13.0 PARTIES IN INTEREST:

- 13.1 This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

14.0 SUCCESSORS AND ASSIGNS:

14.1 This Contract binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Contract does not create any personal liability on the part of any officer or agent of the City.

15.0 BUSINESS STRUCTURE AND ASSIGNMENTS:

15.1 Contractor shall not assign this Contract without the City Purchasing Agent's or Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest under Section 9.406 (c) of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

15.2 Contractor shall not delegate any portion of its performance under this Contract without the City Purchasing Agent's or Director's prior written consent.

16.0 REMEDIES CUMULATIVE:

16.1 Unless otherwise specified elsewhere in this Contract, the rights and remedies contained in this Contract are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Contract except in accordance with its provisions.

17.0 CONTRACTOR DEBT:

17.1 If Contractor, at any time during the term of this Contract, incurs a debt, as the word is defined in Section 15-122 of the Houston City Code of Ordinances, it shall immediately notify the City Controller in writing. If the City Controller becomes aware that Contractor has incurred a debt, she shall immediately notify contractor in writing. If Contractor does not pay the debt within thirty (30) days of either such notification, the City Controller may deduct funds in an amount equal to the debt from any payments owed to Contractor under this Contract, and Contractor waives any recourse therefor.

EXHIBIT "A"

DEFINITIONS

As used in this Contract, the following terms have the meanings set out below:

"Agreement" means this Contract between the Parties, including all exhibits, change orders, and any written amendments authorized by City Council and Contractor.

"City" is defined in the preamble of this Contract and includes its successors and assigns.

"City Purchasing Agent" is defined as the person or duly authorized successor, authorized in writing to act for the City. The term includes, except as otherwise provided in this Contract, the authorized representative of the City Purchasing Agent acting within the limits of delegated authority.

"Contractor Administrator" means the representative of the Department who is responsible for the administration for the Contract.

"Contract Award Notice" means the official notification substantiated by the Notice to Proceed issued by the City Purchasing Agent to the Contractor.

"Contract Charges" means charges that accrue during a given month as defined in Article III.

"Contract Term" is defined in Article IV.

"Contractor" is defined in the preamble of this Contract and includes its successors and assigns.

"Countersignature Date" means the date this agreement is countersigned by the City Controller.

"Director" means the Directors/Chiefs of each of the Departments or the City Purchasing Agent for the City, or the person he or she designates.

"Effective Date" is defined as date contract is countersigned by the City Controller.

"Governing Body" means the Mayor and City Council of the City of Houston.

"Hazardous Materials" is defined in Article II (Environmental Laws).

"Notice to Proceed" means a written communication from the City Purchasing Agent to Contractor instructing Contractor to begin performance.

"Parties" mean all the entities set out in the Preamble who are bound by this Contract.

EXHIBIT "B"

SCOPE OF WORK:

VR-2 AND SAPPHIREPLUS SERVICE PROGRAM

1.0 PRICING AND PAYMENT:

- 1.1 Pricing for the VR-2 and SapphirePlus Service Program is defined in Exhibit H-1 (Fees and Costs) of this Contract. When purchased by the City, payment for one (1) year of Emerald Services shall be prepaid at time of purchase of the equipment. Payment shall be in accordance with the provisions of Section 1.0 of this Contract.

2.0 DESCRIPTION OF SERVICES:

- 2.1 In addition to the provisions of the Contractor's standard published equipment warranty, Contractor shall provide the following additional services for equipment:
 - 2.1.1 All parts and labor for repairs resulting from normal use are covered with the exception of certain hard drive failures and specific conditions detailed in the product warranty. Products returned for service, where the problem is identified as "Damage" is covered up to 5% of the covered Product, per annum. This provision does not apply to the hardware items listed in Section 4.0 (*Cradles, Docks, and 3rd-Party Equipment*) of this Contract.
 - 2.1.2 Contractor shall offer a ninety (90) day warranty on workmanship and serviced equipment. Equipment that exhibits reoccurring or persistent failures shall be repaired or replaced at Contractor's sole discretion.
 - 2.1.3 Contractor shall incorporate all mandatory Engineering Change Orders (ECO's) to Equipment when they are serviced under this Contract. ECO's that apply to the hardware items as listed in Section 4 are not included as part of the SapphirePlus Service Program.
 - 2.1.4 The GD-Itronix Client Care Center (CCC) will be available for troubleshooting hardware problems and support for most all operational issues including Return Material Authorizations (RMA's). The CCC is staffed from 7:00 a.m. to 7:00 p.m. Monday through Friday (CST). Equipment returned without an RMA may be assessed a handling fee.
 - 2.1.5 *icareServeNet*: GD-Itronix' web portal provides 24x7 access to create RMA's, check the status of service requests, or to search the knowledgebase. This service is provided as part of the Contractor's standard product warranty, but does require registration for user-id and user-password.
 - 2.1.6 Batteries: vehicle chargers and wall chargers are included as part of the SapphirePlus Service Program. Batteries shall be replaced when they fall below 70% capacity.

- 2.1.7 Customer is assigned a Client Services Account Manager (CSAM). The CSAM is responsible for solving hardware, software, and process issues associated with the Equipment. The CSAM will handle problem tracking, escalation, and reporting.
- 2.1.8 Field Replacement Kits (FRK) are provided free of charge for items that can be replaced by the user (e.g. hatches, rubber feet, etc.).
- 2.1.9 For all Equipment except the hardware items listed in Section 4 the Contractor shall provide a two (2) working day turnaround on equipment returned to the Contractor for test and/or repair. Such two (2) day period is measured from the working day following Contractor's receipt of equipment to the day the equipment is shipped to the City's specified address.
- 2.1.10 For the hardware items listed in Section 4, Contractor shall provide a five (5) working day turnaround on third-party hardware returned to the Contractor for test and/or repair. Such five (5) day period is measured from the working day following Contractor's receipt of third-party Hardware to the day the third-party hardware is shipped to the City's specified address.
- 2.1.11 Damage is not covered for the hardware items listed in Section 4. Damage repairs for this hardware shall be billed to the City's on a 'time and materials' basis, plus shipping.
- 2.1.12 Overnight freight costs are paid both ways by Contractor for repairs associated with normal wear and tear, with Contractor selecting the overnight courier to be used for shipping. Replacement equipment shipped to the City shall be designated for morning delivery, where available.
- 2.1.13 Customer will receive a preferred labor rate of one-hundred twenty five dollars (\$125.00) per hour plus parts for repairs resulting from normal use (wear and tear), or for non-covered services such as damage or client-requested technology upgrades.
- 2.1.14 As mutually agreed, Contractor will issue regular reports and conduct business reviews regarding the history and performance of both parties under this Contract.
- 2.1.15 A product returned for service, where the problem cannot be duplicated or is identified as a Field Preventable Return (FPR), Contractor shall work with the City to minimize FPRs. FPRs are not covered under this program and shall be billed at \$199 per incident.

2.2 Level-II Certification Training:

- 2.2.1 For clients with on-site information technology support staff, the General Contractor's Level II Certification Program is an option that can be purchased. A key benefit of the program is a faster service turn for repairs that can be performed onsite by the client's own technical resources.

2.2.1.1 Program Pre-requisites:

2.2.1.1.1 Level II Certification Training

2.2.1.1.2 Service Warranty/Uplift

2.2.1.2 Deliverables:

2.2.1.2.1 Training to provide qualified individuals with the technical information and experience required to evaluate problems and perform Level II repairs, which includes:

- 2.2.1.2.1.1 Familiarization with the product, its usage and operating environment;
- 2.2.1.2.1.2 Instruction on configurable hardware options;
- 2.2.1.2.1.3 Procedures to perform replacement of Level II parts and kits;
- 2.2.1.2.1.4 Process to order parts and kits; and
- 2.2.1.2.1.5 How to obtain additional support.

[See Appendices A and B for detailed course outline and syllabus.]

2.2.1.2.2 Full Repair: All repairs are covered except for misuse and abuse of the product as defined by the product warranty. Repairs that are out of scope for the Level II Certification program will be supported by the Contractor's Service Center.

2.2.1.2.3 Client Care Center: Contractor's Client Care Center is available for telephone support and will create RMA's where it is determined a unit shall be returned for repair at the Contractor's Service Center.

2.2.1.2.3.1 Repairs provided by the Service Center include but are not limited to:

- 2.2.1.2.3.1.1 Case Replacement
- 2.2.1.2.3.1.2 System Board Replacement
- 2.2.1.2.3.1.3 LCD Replacement
- 2.2.1.2.3.1.4 Cooling Fan Replacement
- 2.2.1.2.3.1.5 CPU Replacement
- 2.2.1.2.3.1.6 System Daughter Board Replacement
- 2.2.1.2.3.1.7 Multi-I/O Port Repair and Replacement
- 2.2.1.2.3.1.8 Sub-Assembly Repair

2.2.1.2.4 Parts and Kits shall be recommended for level and quantities specified by the Level II Certification program purchased.

2.3 Level I/II Certification Definitions:

Level I	Level II
Best Practices	Best Practices
Hatch, Door, and Dust Cover Replacement	Antenna Cabling Replacement
Hard Drive Replacement	CMOS IC Replacement
Memory Upgrade	Internal WLAN and Bluetooth Radio Replacement/Upgrade
Computer Handle	Radio Interface Board Replacement
Battery Replacement	Display Back Cover Replacement
Display Overlay	GPS Radio Replacement
Keyboard Overlay	Keyboard Replacement

- 2.3.1 The Level II Certification Program requires technical knowledge and certification through the successful completion of the Contractor training program.
- 2.3.2 Level II Certification does not support invasive, board or sub assembly repair options.
- 2.3.3 Contractor reserves the right to examine parts for damage outside the parameters of the program. Parts returned within parameters of damage shall be replaced (under SLA) if client has an SLA, or billable (under warranty) if client has purchased warranty only.
- 2.3.4 This program does not cover damage as a result of misuse and abuse (as defined by the product warranty). Parts returned as misuse and abuse damaged will be considered a billable and not covered as a warranty replacement under SLA or Warranty.
- 2.3.5 This program does not cover Field Preventable Returns (FPR) to General Dynamics Itronix. FPRs and No Trouble Found will be subject to \$199 Service fee.

2.4 Client Responsibilities: Level II Certification:

- 2.4.1 To ensure technical resources to be trained have sufficient technical knowledge and background necessary to perform repairs at the level specified in this Contract.
- 2.4.2 To incorporate Contractor's service procedures and bench standards to ensure product performance.
- 2.4.3 To utilize the Return Material Authorization (RMA) process to initiate a return to the Contractor's service center for repairs outside the scope of this Contract.

- 2.4.4 To use only Contractor's approved specified parts in the service process.
- 2.4.5 Return utilized parts as required and detailed by the Contractor.

3.0 GOLD DISK OPTION:

3.1 If Contractor's Gold Disk Option (Gold Disk) has been purchased separately by the City, the equipment returned for service will be re-loaded with the Gold Disk software image unless otherwise specifically instructed by the City. Contractor shall perform services for the City and is licensed by the City to perform loading of certain City-provided software on the equipment under Contractor's then-current software Gold Disk loading procedures. Title and ownership in such City-provided software shall remain with the City or the third party who has licensed the City to use such software, and the City shall be solely responsible for any and all royalties payable to a third party for the license of such software. Contractor shall have the right to copy such software and related software documentation as required for Contractor to fulfill its obligations under the Gold Disk option.

4.0 CRADLES, DOCKS, AND 3RD-PARTY EQUIPMENT:

4.1 Contractor shall provide warranty service coordination for the equipment listed here for the duration of the manufacturer's warranty. If an extended warranty is offered, pricing is listed in Exhibit H-2.

4.2	<u>Equipment</u>	<u>Manufacturer's Warranty Period</u>
	<input checked="" type="checkbox"/> Dock	1 year provided, add 2, 3 or 4 years to be co-terminus with equipment warranty.

5.0 EQUIPMENT:

5.1 The Equipment covered includes all existing and newly purchased GD-Itronix VR-2 semi-rugged computers or its equal GD-Itronix VR-2 replacement model purchased from General Dynamics directly.

6.0 PAYMENT TERMS:

- 6.1 Contractor shall invoice the City within ten (10) business days after delivery of any hardware equipment and/or upon acknowledgement of any warranty extension/renewal. The City shall make payment in full within thirty (30) days from date of invoice.
- 6.2 All other services shall be billed monthly as incurred.
- 6.3 Contractor shall provide a (90)-day installation warranty.
- 6.4 Travel and expenses will be billed at actual as incurred. General Dynamics Itronix policies align with federal government travel and per-diem allowances.
- 6.5 Shipping costs will be billed at actual. Unless otherwise specified, vehicle mount parts will be shipped by "ground priority."

- 6.6 The RMA process is critical to the efficient flow of units through "Service Repair." Units returned without an RMA must be processed through the "Mystery Shelf" until identified, and a processing fee of \$165 will be assessed.
- 6.7 Should the City desire to upgrade service level, pro-rated pricing will be provided for the difference between the service levels on the remainder of the initial service term.
- 6.8 Upon renewal, Contractor shall pro-rate terms so that expiration dates match on all equipment under service uplift warranty.

7.0 SERVICES WARRANTY:

- 7.1 Contractor warrants that the services provided under this Contract shall be performed in a good and fully workmanlike manner to the City's satisfaction and according to the requirements set forth under this Contract. Contractor also warrants that each of its employees, agents, or representatives assigned to perform services under this Contract shall have the proper skill, training, and background to perform such services in a competent and professional manner.
- 7.2 Contractor shall provide coverage as per the terms and conditions of this Contract for at least a period of one (1) year following the End of Life (EOL) announcement for the equipment identified. Further extensions may be available based on parts availability and parts pricing.
- 7.3 **THIS WARRANTY AND THE WARRANTY PROVISION IN SECTION 5.0 OF THE CONTRACT ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

EXHIBIT "BB"

SCOPE OF WORK:

OPTIONAL EMERALD SERVICE PROGRAM

1.0 PRICING AND PAYMENT:

- 1.1 Pricing for Emerald Services is defined in Exhibit H-2 (Fees and Costs) of this Contract. If purchased by the City, payment for one (1) year of Emerald Services shall be prepaid at time of purchase of the equipment. Payment shall be in accordance with the provisions of Section 1.0 of this Contract.

2.0 DESCRIPTION OF SERVICES:

- 2.1 In addition to the provisions of Contractor standard published equipment warranty, Contractor shall provide the following additional Emerald Services for equipment:
- 2.2 Normal wear and tear is covered with the exception of certain hard drive failures and specific conditions detailed in the product warranty. This provision shall not apply to the hardware items listed in Section 4 of this Contract.
- 2.3 Damage conditions are covered except for damage caused by abuse, misuse, neglect, mishandling or misapplication as detailed in the product warranty. This provision shall not apply to the hardware items listed in Section 4 of this Contract.
- 2.4 Contractor shall offer a ninety (90) day warranty on workmanship and serviced equipment, and equipment that exhibits reoccurring or persistent failures will be repaired or replaced at the Contractor's sole discretion.
- 2.5 Contractor shall incorporate all mandatory Engineering Change Orders (ECO's) to equipment when they are serviced under this Contract. ECO's that apply to the hardware items as listed in Section 4 are not included as part of the Emerald Service Program.
- 2.6 The Contractor Client Care Center (CCC) shall be available for troubleshooting hardware problems and support for most all operational issues including Return Material Authorizations (RMA's). The CCC is staffed from 7:00 a.m. to 5:00 p.m. Monday through Friday (Central). Equipment returned without an RMA shall be assessed a handling fee.
- 2.7 *icareServeNet*: Contractor's web portal provides 24 x 7 access to create RMA's, check the status of service requests, or to search the knowledgebase. This service is provided as part of GD-Itronix' standard product warranty, but does require registration for user-id and user-password.
- 2.8 Batteries: vehicle chargers and wall chargers are included as part of the Emerald Service Program. Batteries shall be replaced when they fall below 70% capacity.
- 2.9 The City is assigned a Client Services Account Manager (CSAM). The CSAM shall be responsible for solving hardware, software, and process issues associated with the equipment. The CSAM shall handle problem tracking, escalation, and reporting.

- 2.10 For all equipment except the hardware items listed in Section 4, Contractor shall provide a two (2) working day turnaround on equipment returned to Contractor for test and/or repair. Such two (2) day period is measured from the working day following Contractor's receipt of equipment to the day the equipment is shipped to the City's specified address.
- 2.11 Field Replacement Kits (FRKs) are provided free of charge for items that can be replaced by the user (e.g. hatches, rubber feet, etc.).
- 2.12 For the hardware items listed in Section 4, Contractor shall provide a five (5) working day turnaround on third-party hardware returned to Contractor for test and/or repair. Such five (5) day period is measured from the working day following Contractor's receipt of third-party hardware to the day the third-party hardware is shipped to the City's specified address.
- 2.13 Damage is not covered for the hardware items listed in Section 4. Damage repairs for this hardware shall be billed to the City on a 'time and materials' basis, plus shipping.
- 2.14 Overnight freight costs are paid both ways by Contractor, with Contractor selecting the overnight courier to be used for shipping. Equipment shipped to the City shall be designated for morning delivery, where available.
- 2.15 Customer will receive a preferred labor rate of one-hundred twenty five dollars (\$125.00) per hour for non-covered services such as damage, or client requested technology upgrades.
- 2.16 As mutually agreed, Contractor shall issue regular reports and conduct business reviews regarding the history and performance of both parties under this Contract.
- 2.17 A product returned for service where the problem cannot be duplicated or is identified as a Field Preventable Return (FPR) is covered under this program, up to 5% of the total number of units in the field. Contractor shall work with the City to minimize FPR's. Whereas, FPR's above 5% per annum shall be subject to a fee of \$199 per incident.

3.0 GOLD DISK OPTION:

- 3.1 If Contractor's Gold Disk Option (Gold Disk) has been purchased separately by the City, the equipment returned for service will be re-loaded with the Gold Disk software image unless otherwise specifically instructed by the City. Contractor shall perform services for the City and is licensed by the City to perform loading of certain City-provided software on the equipment under Contractor's then-current software Gold Disk loading procedures. Title and ownership in such City-provided software shall remain with the City or the third party who has licensed the City to use such software, and the City shall be solely responsible for any and all royalties payable to a third party for the license of such software. Contractor shall have the right to copy such software and related software documentation as required for Contractor to fulfill its obligations under the Gold Disk option.

4.0 CONTRACTOR-CERTIFIED THIRD-PARTY EQUIPMENT:

4.1 Contractor shall provide warranty service coordination for 3rd-party equipment listed here for the duration of the manufacturer's warranty. If an extended warranty is offered, refer to pricing listed in Exhibit H-2.

4.2	<u>EQUIPMENT</u>	<u>QTY</u>
	Vehicle Cradle	169

5.0 EQUIPMENT:

5.1 The equipment covered includes one hundred sixty (161) of the Contractor's "GoBook" rugged computers.

6.0 PAYMENT TERMS:

6.1 Contractor shall invoice the City within ten (10) business days upon full execution of the Contract by the City and Contractor. The City shall make payment in full within thirty (30) days from date of invoice.

7.0 SERVICES WARRANTY:

7.1 Contractor warrants that the services provided under this Contract shall be performed in a good and fully workmanlike manner to the City's satisfaction and according to the requirements set forth under this Contract. Contractor also warrants that each of its employees, agents, or representatives assigned to perform services under this Contract shall have the proper skill, training, and background to perform such services in a competent and professional manner.

7.2 Contractor shall provide coverage as per the terms and conditions of this Contract for at least a period of one (1) year following the End of Life (EOL) announcement for the equipment identified. Further extensions may be available based on parts availability and parts pricing.

7.3 THIS WARRANTY AND THE WARRANTY PROVISION IN SECTION 5.0 OF THE CONTRACT ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

EXHIBIT "C"
EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.
6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the

contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

EXHIBIT "D"
MWBE REQUIREMENTS
[NOT APPLICABLE]

EXHIBIT "E"
DRUG POLICY COMPLIANCE AGREEMENT

I, Michael J. Harris Director, Contracts as an owner or officer of
(Name) (Print/Type) (Title)
General Dynamics Itronix Corporation (Contractor)
(Name of Company)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

Date 19 Sept 2008

Contractor Name GD Itronix Corp.

Signature Michael J. Harris

Title Director, Contracts

EXHIBIT "F"
CONTRACTOR'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT

I, Michael J. Harris Director, Contracts
(Name)(Print/Type) (Title)

as an owner or officer of General Dynamics Itronix Corporation (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has no employee safety impact positions as defined in §5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Contractor agrees and covenants that it shall immediately notify the City's Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

19 Sept 2008
Date

General Dynamics Itronix Corporation
Contractor Name

Michael Harris
Signature

Director, Contracts
Title

CONTRACTOR'S CERTIFICATION OF NON-APPLICATION OF
CITY OF HOUSTON DRUG DETECTION AND DETERRENCE PROCEDURES
FOR CONTRACTORS

I, _____
(NAME) (PRINT/TYPER)

as an owner or officer of _____ (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has fewer than fifteen (15) employees during any 20-week period during a calendar year and also certify that Contractor has no employee safety impact positions as defined in 5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Safety impact position means a Contractor's employment position involving job duties that if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real and/or imminent threat to the personal health or safety of the employee, co-workers, and/or the public.

DATE

CONTRACTOR NAME

SIGNATURE

TITLE

**EXHIBIT "G"
DRUG POLICY COMPLIANCE DECLARATION**

I, Michael J. Harris as an owner or officer of
(Name) (Print/Type) (Title)

General Dynamics Itronix Corporation (Contractor or Vendor)
(Name of Company)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from _____ to _____, 20_____.

MJH
Initials A written Drug Free Workplace Policy has been implemented and employees notified. The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

MJH
Initials Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.

MJH
Initials Collection/testing has been conducted in compliance with federal Health and Human Services (HHS) guidelines.

MJH
Initials Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is - 0 -.

From _____ to _____ the following test has occurred
Initials (Start date) (End date)

	Random	Reasonable Suspicion	Post Accident	Total
Number Employees Tested				
Number Employees Positive				
Percent Employees Positive				

Any employee who tested positive was immediately removed from the City worksite consistent with the Mayor's Policy and Executive Order No. 1-31.
Initials

MJH
Initials I affirm that falsification or failure to submit this declaration timely in accordance with established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

19 Sept 2008
(Date)

Michael J. Harris
(Typed or Printed Name)
Michael J. Harris
(Signature)
Director, Contracts
(Title)

EXHIBIT "H-1"

FEEES AND COSTS (YEARS 1 THROUGH 5)

VR-2 AND SAPPHIREPLUS SERVICE PROGRAM

PART #	DESCRIPTION	UOM	UNIT PRICE
IX605-02B	1,024 MB OF DDR2 RAM, (1X1024) TOTAL (GOBOOK VR-2)	EA	\$63.00
IX605-04C	BLUETOOTH CLASS 2 + GPS (GOBOOK VR-2)	EA	\$276.57
IX605-05A	INTEL 802.11AGN - AMERICAS (GOBOOK VR-2)	EA	\$31.50
IX605-06A	DVD-RW/CD-RW (GOBOOK VR-2)	EA	\$94.50
IX605-07YA	WWAN RADIO-MODULE READY (GOBOOK VR-2)	EA	\$204.75
IX605-10A	EXPRESS CARD READER & TYPE II PCMCIA CARD READER (GOBOOK VR-2)	EA	\$18.90
10-0189-003VR2SAP	3-YEAR SAPPHIRE PLUS SERVICE GOBOOK VR-2	EA	\$450.00
62-0689-001R	KIT, EV-DO WIRELESS WAN/VERIZON CRMA EXPRESS MODULE (GOBOOK VR-2)	EA	\$236.25
50-0198-001R	VEHICLE DOCK, NON-RF w/Persistent Serial Port (GOBOOK VR-2)	EA	\$314.37
IX605-01A	GOBOOK VR-2 BASE UNIT, CORE2 DUO 2.0GHZ, XGA TOUCHSCREEN DISPLAY (GOBOOK VR-2) WITH INCLUDED OPTIONS, BELOW.	EA	\$2,063.25
IX605-13A	6 CELL MAIN BATTERY 4.4 AH, 47.52 WH (GOBOOK VR-2)	EA	Included
IX605-14AA	U.S.CONFIGURATION - KEYBOARD (GOBOOK VR-2)	EA	Included
IX605-16A	MICROSOFT WINDOWS XP SYSTEM SOFTWARE - ENGLISH NA/ WITH FR MUI (GOBOOK VR-2)	EA	Included
IX605-17Z	NO HANDLE OR BRACKETS REQUIRED (GOBOOK VR-2)	EA	Included
IX605-18AA	STANDARD GENERAL DYNAMICS DISPLAY BACK AND LABEL SET (GOBOOK VR-2)	EA	Included
IX605-11Z	STANDARD GENERAL DYNAMICS BIOS (GOBOOK VR-2)	EA	Included
IX605-12Z	NO THEFT PROTECTION / SECURITY HARDWARE REQUIRED (GOBOOK VR-2)	EA	Included
IX605-03A	80 GB SHOCK MOUNTED HARD DISK DRIVE (GOBOOK VR-2)	EA	Included
IX605-09B	NO EXTERNAL ANTENNA CONNECTOR REQUIRED (FOR USE WITH CRMA WWAN OPTIONS) (GOBOOK VR-2)	EA	Included

EXHIBIT "H-1"

FEES AND COSTS (YEARS 1, 2, & 3)

VR-2 AND SAPPHIREPLUS SERVICE PROGRAM (CONTINUED),

ADDITIONAL WARRANTY UPLIFTS AND SERVICES, & RADIO OPTIONS:

PART #	DESCRIPTION	UOM	UNIT PRICE
10-0189-001VR2SAP	1-YEAR SAPPHIRE PLUS SERVICE (Extension Year 4)	EA	\$345.00
10-0179-001VCEW	1-YEAR EXTENDED WARRANTY VEHICLE CRADLE	EA	\$38.00
10-0179-002VCEW	2-YEAR EXTENDED WARRANTY VEHICLE CRADLE	EA	\$76.00
10-0189-002VR2SAP	2-YEAR SAPPHIRE PLUS SERVICE (Extension Years 4 & 5)	EA	\$690.00
10-0189-003VR2SAP	3-YEAR SAPPHIRE PLUS SERVICE GOBOOK VR-2	EA	\$450.00
	GOLD DISK CUSTOM DISK IMAGE MICROSOFT (Cost Per Unit)	EA	\$45.00
	LEVEL I/II FIELD REPAIR TRAINING CLASS (d)	EA	\$1160.00
	OTHER RADIO OPTIONS FOR SUBSTITUTE OF VERIZON (SPRINT, ALLTEL OR ATT RADIO OPTIONS CAN BE SUBSTITUTED FOR VERIZON KIT ABOVE).	EA	\$236.25

Note for Years 4 and 5: For all fiscal years under this Agreement after Year-3, the Director may increase rates upon mutual agreement between the City of Houston and General Dynamics Itronix Corporation.

EXHIBIT "H-2"

FEE AND COSTS FEES AND COSTS (YEARS 1, 2, & 3)

EMERALD EQUIPMENT AND WARRANTY SERVICES PROGRAM

DESCRIPTION	UOM	UNIT PRICE
EMERALD SERVICE	EA	\$138.00
EXTENDED WARRANTY	EA	\$111.00
VEHICLE CRADLE	EA	\$38.00

Note for Years 4 and 5: For all fiscal years under this Agreement after Year-3, the Director may increase rates upon mutual agreement between the City of Houston and General Dynamics Itronix Corporation.

EXHIBIT "I"
PAY OR PLAY PROGRAM



ATTACHMENT A

CERTIFICATION OF AGREEMENT TO COMPLY WITH PAY OR PLAY PROGRAM

Contractor Name: General Dyanmics Itronix Corp. \$ (Contractor/Subcontractor) (Amount of Contract)

Contractor Address: 12825 East Mirabeau Parkway, Spokane Valley, WA 99216

Project No.: [GFS/CIP/AIP/File No.]

Project Name: [Legal Project Name]

In accordance with the City of Houston Pay or Play Program authorized by Ordinance 2007-534, Contractor agrees to abide by the terms of this Program. This certification is required of all contractors for contracts subject to the program. You must agree EITHER to PAY or to PLAY for each covered employee, including those of subcontractors subject to the program.

[] Yes [X] No Contractor agrees to Pay \$1.00 per hour for work performed by covered employees, including covered subcontractors' employees, under the contract with the City.

[X] Yes [] No Contractor agrees to offer health benefits to each covered employee, including covered subcontractors' employees that meet or exceed the following criteria: (1) the employer will contribute no less than \$150 per employee per month toward the total premium cost; and (2) the employee contribution, if any amount, will be no greater than 50% of the total premium cost.

[] Yes [X] No Contractor agrees to pay of behalf of some covered employees and play on behalf of other covered employees, in accordance with program requirements, including subcontractors' employees, if applicable.

[X] Yes [] No Contractor will comply with all provisions of the Pay or Play Program and will furnish all information and reports requested to determine compliance with program provisions.

[X] Yes [] No For Prime Contractors Only: Contractor will file compliance reports with the City, which will include activity for subcontractors subject to the program, in the form and to the extent requested by the administering department or the Affirmative Action and Contract Compliance Office. Compliance reports shall contain information including, but not limited to, documentation showing employee health coverage and employee work records.

I hereby certify that the above information is true and correct.

Michael J. Harris CONTRACTOR (Signature)

19 Sept. 2008 DATE

Michael J Harris Director, Contracts NAME AND TITLE (Print or Type)



**ATTACHMENT C
Pay or Play Program
Contractor/Subcontractor Waiver Request**

If a waiver of the Pay or Play Program requirements is requested, the City of Houston contracting department shall submit this Waiver Request form to the City of Houston Affirmative Action and Contract Compliance Division along with any supporting documentation. A waiver, if granted, shall be effective for the duration of the contract. In the event of renewal or renegotiation of the contract, subsequent waivers may be requested and either granted or denied.

Department: _____ Date Submitted: _____

Contact Name: _____ Phone: _____

Contractor/Subcontractor Name: General Dynamics Itronix Corp Vendor No.: _____

Contract No./Description: _____

Contract/Subcontract Amount: \$ _____

This contract or subcontract is appropriate for a waiver based on the following: *(Check the appropriate box.)*

- Sole Source.** The contractor or subcontractor is the sole source of the service or material at issue.
- Emergency.** The contract or subcontract is a response to an emergency that endangers public health or safety.
- Essential.** No other qualified responsive bidders comply with the requirements of the Pay or Play Ordinance and the contract or subcontract is for a service or project that is essential to the City or public.
- Adverse Impact.** Compliance with the Pay or Play Program would cause an unreasonably adverse impact on the City's ability to obtain services or an unreasonably adverse financial impact on the City.
- Bulk Purchasing.** The services to be purchased are available under a bulk purchasing agreement with a federal, state, or local government entity.
- Intergovernmental/Interlocal Agreement/Purchasing Cooperative**

Department Signature:

Request submitted by department head or authorized representative:

Signature

Print Name



City of Houston Affirmative Action and Contract Compliance Use Only

Action: [] Approved [] Disapproved

Signature: _____ Date: _____

Print Name: _____

APPENDIX A: Level II Certification Course Outline

Course Description

The Contractor's maintenance training provides IT technicians with the technical information and experience required to effectively perform Level II repairs. This one (1) day course consists of classroom and laboratory lessons that emphasize hands-on practical training. Participation is limited to eight (8) technicians per training session. Training facilities should include ample work space and include screen/projector capabilities. All training and materials shall be delivered in the English language.

Course curriculum includes product familiarization, operational characteristics and specifications, block diagrams, use of diagnostics, and recommended repair procedures. Documentation supplied at the time of training will include model/configuration specific training materials to support Level II repairs.

Training Prerequisites

This course is targeted toward experienced technicians capable of troubleshooting, maintenance, and repairs to a rugged laptop product. It is recommended that participants have:

- An Associate of Arts Degree in electronics and a minimum of two (2) years experience with an emphasis in digital electronics and microprocessors;
- Skill in the use of common test/repair equipment and procedures;
- Familiarity in the operation and use of PCs, MSDOS, Windows, various communications protocols, and modems;
- Knowledge in specialized and automatic test equipment and software.

Course Objectives

To provide qualified individuals with the technical information and experience required to diagnose problems and perform Level II repairs. Technicians will be:

- Familiarized with the Contractor's product, its usage, and operating environment;
- Instructed on the Contractor's product structure and configurable hardware options;
- Instructed in the functions and basic theory of operation of the Contractor's product and subassemblies;
- Instructed in the utilization of the Contractor's service and diagnostic materials;
- Instructed in recommended Level I/II replacement procedures for the Contractor's product;
- Instructed in Contractor's ongoing product support policies and procedures; and
- Instructed in the recommended procedures to test, troubleshoot, and repair the Contractor's product within level I/II limits.

APPENDIX B: Level II Certification Training Course Syllabus

I. Introduction

- A. Contractor's Maintenance Course Overview
 - 1. Schedule
 - 2. Identification of Course Objectives
 - 3. Course Content and Training Approach

II. Introduction to the Contractor's Product

- A. Hardware Overview:
 - 1. Power and I/O Ports, Basic Features
 - 2. Special Features (Rugged, Sealed, Radio's, etc.)
 - 3. Unique Characteristics of the Laptop Design
 - 4. Available Options
- B. Mobile Computer Tools:
 - 1. Battery Maintenance
 - 2. Touch-Screen Calibrator
 - 3. Hard Disk Recovery
 - 4. Power Saver
- C. Advanced Settings:
 - 1. BIOS Setup and Default Configuration
 - 2. Setup Options
- D. Basic Hardware Troubleshooting:
 - 1. Touch-Screen Operation and Troubleshooting
 - 2. Removing and Reinstalling HDD
 - 3. Operational "Symptoms" Related to Unique Configuration

III. Hardware Descriptions

- A. Documentation
- B. Functional Blocks
- C. System PCB
- D. Memory Modules
- E. Modem/Ethernet
- F. Hard Disc Drive
- G. Keyboard Assembly
- H. Display Assembly
- I. RF features/Integration
- J. Miscellaneous Assemblies

IV. Disassembly/Assembly Process (Hands-on)

- A. Memory
- B. Hard Disk Drive
- C. WWAN RF Components
- D. Keyboard
- E. WiFi Modem and Components
- F. Doors and Covers
- G. CMOS/RTC Battery
- H. Handles

V. Contractor's Troubleshooting and Repair (Hands-on)

- A. Symptom/Problem Determination
- B. Hardware Replacement
- C. Verification of Repair